

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated October 26, 2012 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence established that he has a severe physical or mental impairment. The ministry was also not satisfied that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. As the ministry found that the appellant is not significantly restricted with DLA, it could not be determined that he requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Person With Disabilities (PWD) Application: applicant information dated August 9, 2012, physician report dated August 16, 2012, and assessor report dated August 16, 2012;
- 2) Letter dated September 25, 2012 from the ministry to the appellant denying his request for PWD designation and enclosing a copy of the original decision summary; and,
- 3) Request for Reconsideration- Reasons.

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

In his Notice of Appeal, the appellant stated that he has had three hernia operations in the past and he has severe pain in his lower back and severe pain in his right toe due to a bunion and also arthritis or rheumatism in that toe.

In the Request for Reconsideration, an unknown author stated that the description of the appellant's daily living and social functioning skills on his original application were based on his past life when he was an independent, working person capable of looking after himself. Since April 2012 when he left his filthy SRO room he has been living on the street and in shelters. He has become mentally, physically and spiritually impaired. He cannot plan, prepare, or cook meals or store food; he lives on the street. He cannot bank or budget or pay rent or bills; he gets approximately \$200 per month in social assistance. He is not taking medications currently. His physical disabilities as described in his original application are the same or worse due to "sleeping rough" for the past 6 months. The appellant over-estimated his ability to cope on his own with no resources. His daily living/social skills are severely lacking.

In his self-report included with the PWD application, the appellant stated that he has lower back problems and right foot pain and extreme discomfort with his large toe. The appellant stated that it affects his ability to work and to walk for long periods of time.

At the hearing, the appellant stated that he has not had time to get in to see his doctor again because he spends every day going around to find free meals. The appellant stated that the line-ups are getting longer at the organizations that provide free meals and he has to plan where and when to go each day. The appellant stated that he could probably prepare his own meals if he was permitted to light a campfire and cook on the fire. The appellant stated that his foot is sore every day because of a bunion on his right foot. The appellant stated that he has arthritis and rheumatism in the joint of his large toe and it is swollen and rubs on the inside of his shoe. The appellant stated that there is a big difference in shape when his right and left foot are compared, because of the swelling in his right toe. The appellant stated that he walked to the hearing location, that it took him about an hour with "no speed walking" and he had to take a break to take the weight off his foot. The appellant stated that some days are worse for walking, such as when the weather is damp or the temperature is colder. The appellant stated that on a good day, on level ground, he could walk 2 or 3 blocks until he would feel pain, only in his right foot. On a bad day, he could walk about a block and then he would have to stop and rest. The appellant stated that he has more difficulty with stairs, that it takes longer and he is slower, that he is not "like a race horse", like when he was younger.

The appellant stated that he did not injure his toe, that he figures it is "just worn out", that it is "like a rusty joint." The appellant stated that he used to work in physically demanding jobs and he probably has problems with his toe from wearing work boots and with the hernias from all the heavy lifting he did. The appellant stated that he had surgeries for hernias in the 1990's, that he had experienced pain in his back and side and was sent immediately for surgery. The appellant stated that he can currently lift, as long as it is not too heavy, that light things are "no big deal." The appellant stated that he cannot afford to buy medication to help with the pain, although he sometimes gets Tylenol from a friend. The appellant stated that he does not have or use a cane, but he sometimes uses an umbrella for support but it does not help with the pain, it just makes him "look older."

The physician who completed the physician report indicated the appellant has been his patient since February 2012 and that he has seen the appellant 2 to 10 times in that period (6 months). In the physician report, the physician confirmed a diagnosis of chronic lower back pain with date of onset 5-6 years, and chronic pain in right foot/ large toe, with a date of onset of 10 years. In describing the severity of the medical condition relevant to the appellant's impairment, the physician noted "...chronic lower back pain; chronic right foot/toe pain- must be all the time- severe; as a result has difficulty bending, lifting, standing, walking, climbing stairs; as a result, requires assistance with transportation all the time." The physician indicated that the appellant has not been prescribed medications or treatments that interfere with his ability to perform daily living activities (DLA) and he does not require an aid for his impairment. The physician reported that the appellant can walk less than one block unaided on a flat surface, he can climb 5 or more stairs unaided, he can lift 15 to 35 lbs. and remain seated for 2 to 3 hours. The physician reported that there are no significant deficits with cognitive and emotional function.

The appellant's physician also completed the assessor report and indicated the appellant has a good ability to communicate in all areas. The physician indicated that the appellant is independent with walking indoors and outdoors, climbing stairs and standing, while requiring periodic assistance from another person with lifting and carrying and holding and taking significantly longer than typical with all areas of mobility and physical ability ("3 times as long"). In the explanation, the physician noted that the appellant "...needs help with lifting, carrying and holding some of the time." The physician indicated that the appellant is independent with all tasks of personal care including dressing, grooming, bathing, toileting, feeding self, regulating diet, with transfers in/out of bed and transfers on/off chair, while taking significantly longer than typical with all tasks ("2 times as long"). The physician reported that the appellant is independent with doing laundry and with basic housekeeping and takes significantly longer than typical with both tasks ("2 times as long"). The physician indicated that the appellant is independent with all tasks of shopping but takes significantly longer than typical with going to and from stores and carrying purchases home ("2 times as long"). The physician reported that the appellant is independent with all of the tasks of managing meals while taking significantly longer than typical with all tasks ("2 times as long"). The physician indicated that the appellant is independent with all tasks of paying rent and bills including banking and budgeting and with all tasks of managing medications. The physician reported that the appellant is independent with getting in and out of a vehicle and with using transit schedules and arranging transportation, but requires continuous assistance from another person with using public transit ("problems walking and standing"). The physician added a comment that the appellant "...needs help all the time with transportation." The physician indicated that the section of the assessor report for an applicant with an identified mental impairment or brain injury and which sets out impacts to cognitive and emotional functioning is not applicable as there is no impact assessed in every area. For social functioning, the physician indicated that the appellant is independent in all areas and has good functioning with both his immediate and extended social networks.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a person with disabilities (PWD) as he does not have a severe mental or physical impairment and that his daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

Severity of physical impairment:

The ministry argues that the evidence does not show that the appellant has a severe physical impairment. The ministry argues that the physician indicated that the appellant can independently walk less than one block, however as the assessor the physician indicated that the appellant can independently walk indoors/outdoors, although it takes him 3 times longer. The ministry argues that the physician indicated that the appellant can independently climb 5 or more stairs, lift 15 to 35 lbs. and remain seated for 2 to 3 hours. The ministry argues that the physician indicated that the appellant requires periodic assistance with lifting and carrying and holding as he needs help with lifting, carrying and holding "some of the time" and how often he requires this assistance has not been documented. The ministry also argues that in the functional assessment, the physician indicated that the appellant can lift 15 to 30 lbs. The ministry argues that the physician indicated that the appellant does not require any prostheses or aids for his impairment. The ministry acknowledges that the appellant's impairments may impact his physical functioning, but argues that there is not enough evidence to establish a severe physical impairment.

The appellant argues that he has a severe physical impairment as a result of chronic lower back pain and chronic pain in his right foot/ large toe. The appellant argues that his foot is sore every day because of a bunion on his right foot, that he has arthritis and rheumatism in the joint of his large toe and it is swollen and rubs on the inside of his shoe. The appellant argues that his conditions impact his walking, and on a good day, on level ground, he could walk 2 or 3 blocks and, on a bad day, he could walk about a block and then he would have to stop and rest. The appellant argues that he has more difficulty with stairs, that it takes longer and he is slower. The appellant argues that he can currently lift light things only. The appellant argues that he cannot afford to buy medication to help with the pain and he does not use a cane, but he sometimes uses an umbrella for support. In the Request for Reconsideration, it is argued that since April 2012, when the appellant left his filthy SRO room, he has been living on the street and in shelters and he has become mentally, physically and spiritually impaired. It is argued that the appellant's physical disabilities as described in his original application are the same or worse due to "sleeping rough" for the past 6 months.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of chronic lower back pain with date of onset 5-6 years, and chronic pain in right foot/ large toe, with a date of onset of 10 years, as set out in the physician report. In describing the severity of the medical condition relevant to the appellant's impairment, the physician noted "...chronic lower back pain; chronic right foot/toe pain- must be all the time- severe; as a result has difficulty bending, lifting, standing, walking, climbing stairs; as a result, requires assistance with transportation all the time." In the physician report, the physician indicated that the appellant has not been prescribed medications or treatments that interfere with his ability to perform DLA and he does not require an aid for his impairment. The physician reported that the appellant can walk less than one block unaided on a flat surface, he can climb 5 or more stairs unaided, he can lift 15 to 35 lbs. and remain seated for 2 to 3 hours. In the assessor report, the physician indicated that the appellant is independent with walking indoors and outdoors, climbing stairs and standing, while requiring periodic assistance from another person with lifting and carrying and holding and taking significantly longer than typical with all areas of mobility and physical ability ("...3 times as long"). In the explanation, the physician noted that the appellant "...needs help with lifting, carrying and holding some of the time." The appellant stated that his conditions impact his walking, and on a good day, on level ground, he could walk 2 or 3 blocks and, on a bad day, he could walk about a block and

then he would have to stop and rest. The appellant argues that he has more difficulty with stairs, that it takes longer and he is slower. The appellant argues that he can currently lift light things only. The evidence demonstrates that the appellant is independent with mobility while taking 3 times longer than typical, and that he need help with lifting and carrying and holding "some of the time", which the panel finds would be for weights in excess of 35 lbs. The panel finds that the ministry reasonably concluded that these restrictions to the appellant's functional skills are not indicative of a severe physical impairment. Therefore, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment was reasonable.

Severity of mental impairment:

The ministry argues that the evidence does not show that the appellant has a severe mental impairment. The ministry points out that the physician does not indicate that the appellant has any significant deficits to cognitive and emotional functioning. The ministry argues that the physician, as the assessor, indicates that the appellant's impairments have no impact on his cognitive and emotional functioning.

In the Request for Reconsideration, it is argued that since April 2012, when the appellant left his filthy SRO room, he has been living on the street and in shelters and he has become mentally, physically and spiritually impaired.

The panel finds that the evidence of a medical practitioner does not confirm a diagnosis of a mental disorder. The physician reported in that there are no significant deficits with cognitive and emotional function. The physician indicated in the assessor report that there is no impact assessed in every area of cognitive and emotional functioning. For social functioning, the physician indicated that the appellant is independent in all areas and has good functioning with both his immediate and extended social networks. Therefore, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

Whether ability to perform DLA is directly and significantly restricted:

The ministry argues that the evidence does not establish that the appellant's DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry argues that the physician did not indicate, in the physician report, that the appellant is restricted in his ability to manage DLA. The ministry argues that the physician indicated that the appellant has not been prescribed any medication and/or treatments that would interfere with his ability to perform DLA. The ministry argues that the physician, as the assessor, indicated that although the appellant takes twice as long, he is able to independently manage all of his DLA except for using public transit. The ministry argues that the physician indicated that the appellant requires continuous assistance with using public transit as he has problems with walking, however this limitation in and of itself does not provide evidence of a significant restriction in the appellant's ability to manage his DLA. The ministry argues that the physician indicated that the appellant can independently manage all of his social functioning and he has good functioning with his immediate and extended social networks.

The appellant argues that the evidence of the physician establishes that he is directly and significantly restricted in his ability to perform his DLA either continuously or periodically for extended periods. The appellant argues that his conditions impact his walking, and on a good day, on level ground, he could walk 2 or 3 blocks and, on a bad day, he could walk about a block and then he would have to stop and rest. In the Request for Reconsideration, it is argued that the appellant's daily living/social skills are severely lacking.

The panel finds that the legislation requires that the ministry must be satisfied that the opinion of a prescribed professional confirms that the appellant's ability to perform DLA is directly and significantly restricted either continuously or periodically for extended periods. In terms of preparing his own meals, in the assessor report the physician indicated that the appellant is independent but takes significantly longer than typical ("2 times as long") with all tasks including meal planning, food preparation, cooking and safe storage of food. In the

Request for Reconsideration, it is argued that the appellant cannot plan, prepare, or cook meals or store food because he lives on the street. The appellant stated that he spends his days looking for free food from organizations but if he were allowed to light a campfire, he could cook something on the fire. The panel finds that the assessment in the report is to gage the assistance required related to impairments that directly restrict the appellant's ability in these tasks, and not to assess his ability relative to a lack of a place of residence. For managing personal finances, the physician reported that the appellant is independent with all tasks of paying rent and bills including banking and budgeting, with no further comments provided. In the Request for Reconsideration, it is argued that the appellant cannot bank or budget or pay rent or bills because he gets approximately \$200 per month in social assistance. The panel finds that the assessment in the report is to gage the assistance required related to impairments that directly restrict the appellant's ability in these tasks, and not to assess his financial means.

In terms of shopping for his personal needs, the physician indicated that the appellant is independent with all tasks but takes significantly longer than typical ("2 times as long") with going to and from stores and with carrying purchases home. For use of public or personal transportation facilities, the physician indicated that the appellant requires continuous assistance with using public transit due to problems with walking and standing, while being independent with getting in and out of a vehicle and using transit schedules and arranging transportation. The physician added the comment that the appellant "...needs help all the time with transportation." With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the physician indicated that the appellant is independent with doing laundry and basic housekeeping but takes significantly longer than typical, taking two times as long.

For moving about indoors and outdoors, the physician indicated that the appellant is independent with walking indoors and outdoors, climbing stairs and standing. The appellant stated that his conditions impact his walking, and on a good day, on level ground, he could walk 2 or 3 blocks and, on a bad day, he could walk about a block and then he would have to stop and rest, and that he does not currently use a cane but occasionally uses an umbrella for support. Regarding performing personal hygiene and self care, the physician indicated that the appellant is independent with all tasks of personal care, including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and on/off chair, while taking two times as long with each task. With respect to managing his personal medications, the physician reported that the appellant is independent with all tasks, including filling/refilling prescriptions, taking as directed and safe handling and storage. In the Request for Reconsideration, it is argued that the appellant is not currently taking medications.

The evidence demonstrates that the appellant is continuously restricted in 1 out of 3 tasks of using transportation but is otherwise independent with all other tasks of DLA, taking two times longer with some of the tasks. Therefore, the panel finds that the ministry's determination that the evidence of a prescribed professional does not establish a direct and significant restriction on the appellant's ability to perform DLA either continuously or periodically for extended periods, as required by Section 2(2)(b)(i) of the EAPWDA, was reasonable.

Whether help to perform DLA is required:

The ministry's position is that since it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons. The ministry points out that the physician did not indicate that the appellant requires the use of any prostheses or aids for his impairment, or an assistive device and he does not require the services of an assistance animal. The appellant's position is that he requires the significant help or supervision of another person in order to perform his directly and significantly restricted DLA, and he occasionally uses an umbrella as an assistive device.

In determining whether the ministry reasonably concluded that the appellant does not require the significant help or supervision of another person or the use of an assistive device, the panel notes the information from the physician and the appellant that he lives in shelters and does not currently receive assistance for DLA. The

appellant stated that he gets help with free meals from community organizations. The physician indicated that the appellant does not currently use an assistive device. As it has not been established that the ability to perform DLA is significantly restricted, the panel finds that the ministry's conclusion that the requirement for significant help or supervision of another person, an assistive device, or the services of an assistance animal to perform DLA, under Section 2(2)(b)(ii) of the EAPWDA, has not been met was reasonable.

Conclusion:

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.